

RECEIVED
USDC, WESTERN DISTRICT OF LA
TONY R. MOORE, CLERK
ALEXANDRIA, LOUISIANA
DATE 11/24/09
BY mill

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

SPORTS DESIGN & DEVELOPMENT, INC.

CIVIL ACTION NOS. 1:08-CV-1179

-vs-

JUDGE DRELL

MILLER BREWING CO.

MAGISTRATE JUDGE KIRK

R U L I N G A N D O R D E R

Presently before the court is Miller Brewing Company's ("Miller") motion to dismiss (Doc. 10) this action for failure to join "a necessary and indispensable party". According to the motion and an affidavit, this corporation assigned all of its U.S. trademarks to MillerCoors LLC, which, according to these documents, received ALL of the liabilities pertaining to the marketing of the Miller trademarks. This case is primarily a trademark infringement case. Plaintiff, Sports Design & Development, Inc. ("Sports Design"), claims Miller infringed upon its trademark when it marketed a fishing lure virtually identical to Sports Design's but with a Miller Lite (Beer) logo. It also claims damages on related claims/causes of action.

The motion filed is a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(7). That rule, 12(b), allows for the presentation of certain defenses in advance by motion, including, as here, the failure to join a party under Rule 19. Upon reading Rule 19 one learns that the remedy in such situations is generally not dismissal at the outset. Rather, pursuant to Rule 19(a)(2), if a person deemed to be a "Required Party" (as

opposed to the former designation of "Indispensable" in the Rule) has not been joined, then the court must order that party joined if so doing will not destroy jurisdiction. Consideration for dismissal is a later matter, depending on whether actual joinder of the party is not feasible or is not accomplished. See FED. R. CIV. P. 19(b).

Based upon the representations in the motion and the attached affidavit, MillerCoors LLC is a "Required Party" because, as represented, it is the party which would likely be liable in this case if trademark infringement in the use of the Miller Lite logo is proved.

Accordingly, pursuant to Rule 19(a)(2), it is **ORDERED** that, within 30 days of this date, Plaintiff shall cause MillerCoors LLC to be joined in this action by amended pleading and shall use best efforts to effect service of process. Failure to join this party will result in additional consideration of this case for dismissal upon additional motion from defendant.

SIGNED on this 23rd day of July, 2009 at Alexandria, Louisiana.



DEE D. DRELL
UNITED STATES DISTRICT JUDGE